

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

(1) FRANCIS ENERGY, LLC	)	
f/k/a FRANCIS SOLAR, LLC,	)	
	)	
	)	
Plaintiff,	)	Case No. 4:22-cv-00008-CVE-JFJ
	)	
v.	)	
	)	
(1) BROADBAND TELCOM POWER, INC.,	)	
	)	
Defendant.	)	

**ANSWER AND AFFIRMATIVE DEFENSES  
OF DEFENDANT BROADBAND TELECOM POWER, INC.**

Defendant Broadband Telecom Power, Inc., (“BTC Power”) for its Answer to the Petition of Plaintiff Francis Energy, LLC f/k/a Francis Solar, LLC (“Francis”), filed on December 15, 2021 and removed to this Court on January 5, 2022, states as follows. All the allegations contained in Plaintiff’s Petition are denied except as specifically admitted hereinafter.

1. Based upon information and belief, BTC Power admits Paragraph No. 1 of the Petition.

2. BTC Power admits the allegations contained in Paragraph No. 2 of the Petition.

3. Regarding the allegations contained in Paragraph No. 3 of the Petition, BTC Power admits that this federal court has jurisdiction over the parties and subject matter and that venue is proper in this federal court.

4. BTC Power admits that BTC Power and Plaintiff entered into General Terms and Conditions of Sale and Delivery on April 29, 2019, (the “April 29, 2019 Conditions”) the terms of

which are set forth in the April 29, 2019 Conditions. BTC Power states that the April 29, 2019 Conditions expired no later than April 29, 2020. BTC Power and Plaintiff also entered into purchase orders and/or quotations subject to certain terms and conditions, including, but not limited to the BTC Power Limited 2 Year Warranty (collectively, the “Agreements”). BTC Power denies Paragraph No. 4 of the Petition to the extent that it contains allegations that differ from the terms of the April 29, 2019 Conditions and/or the Agreements.

5. BTC Power admits that certain of its responsibilities with regard to defective products are set forth in the April 29, 2019 Conditions and the Agreements, including repair or replacement of defective products pursuant to the limited warranty set forth therein. BTC Power denies Paragraph No. 5 of the Petition to the extent that it contains allegations that differ from the terms of the April 29, 2019 Conditions and/or the Agreements.

6. BTC Power admits that certain of its responsibilities with regard to product warranties are set forth in the April 29, 2019 Conditions and the Agreements. BTC Power denies Paragraph No. 6 of the Petition to the extent that it contains allegations that differ from the terms of the April 29, 2019 Conditions and/or the Agreements.

7. BTC Power states that the terms of the April 29, 2019 Conditions and the Agreements speak for themselves. BTC Power denies Paragraph No. 7 of the Petition to the extent that it contains allegations that differ from the terms of the April 29, 2019 Conditions and/or the Agreements.

8. BTC Power admits that during 2019 and 2020, Plaintiff purchased more than \$10,000,000.00 in products from BTC Power. BTC Power is without sufficient information and

belief to admit or deny the remaining allegations in Paragraph No, 8 of the Petition and therefore denies the same.

9. BTC Power admits that Plaintiff reported one or more problems related to products it purchased from BTC Power. BTC Power denies the remaining allegations in Paragraph 9 of the Petition.

10. BTC Power admits that Plaintiff reported one or more problems related to products it purchased from BTC Power. BTC Power denies the remaining allegations in Paragraph 10 of the Petition.

11. BTC Power denies the allegations in Paragraph 11 of the Petition.

12. BTC Power denies the allegations in Paragraph 12 of the Petition.

13. With regard to Paragraph No. 13 of the Petition, BTC Power admits that the parties entered into the April 29, 2019 Conditions and the Agreements.

14. BTC Power admits that certain of its responsibilities with regard to defective products are set forth in the April 29, 2019 Conditions and/or the Agreements, including repair or replacement of defective products pursuant to the limited warranty set forth therein. BTC Power denies Paragraph No.14 of the Petition to the extent that it contains allegations that differ from the terms of the April 29, 2019 Conditions and/or the Agreements.

15. BTC Power denies the allegations in Paragraph 15 of the Petition.

16. BTC Power denies the allegations in Paragraph 16 of the Petition.

17. BTC Power admits that certain of its responsibilities with regard to product warranties are set forth in the April 29, 2019 Conditions and/or the Agreements and other contracts and written communications between the parties. BTC Power denies Paragraph No.17 of the Petition to the extent that it contains allegations that differ from the terms of the April 29, 2019 Conditions, the Agreements, and/or other contracts and written communications.

18. BTC Power denies the allegations in Paragraph 18 of the Petition.

19. BTC Power denies the allegation in Paragraph 19 of the Petition.

20. BTC Power denies the allegations in Paragraph 20 of the Petition.

21. BTC Power admits that Plaintiff paid monies for some of the products its purchased. However, Plaintiff still owes BTC Power for the purchases of one or more products that have been delivered by BTC Power to Plaintiff. Thus, BTC denies the remaining allegations in Paragraph 21 of the Petition.

22. BTC Power denies the allegations in Paragraph 22 of the Petition.

23. BTC Power denies the allegations in Paragraph 23 of the Petition.

24. BTC Power denies the allegations in Paragraph 24 of the Petition.

### **AFFIRMATIVE DEFENSES**

Subject to and without waiver of any of the denials provided above, BTC Power asserts the affirmative defenses below, which singly or in combination, bar Plaintiff's right to recover, in whole or in part, the relief requested in Plaintiff's Petition. By setting forth the following affirmative defenses, BTC Power does not assume the burden of proving any fact, issue or element

of a cause of action where such burden properly belongs with Plaintiff. Moreover, nothing stated herein is intended to be construed as an acknowledgment that any particular issue or subject matter is relevant to the allegations contained in Plaintiff's Petition.

25. Plaintiff's Petition in whole or in part fails to state a claim upon which relief can be granted.

26. Plaintiff's claims are barred in whole or in part by the doctrines of waiver, estoppel, laches and/or unclean hands.

27. Plaintiff's claims fail in whole or in part because no express warranty exists for one or more of the products Plaintiff purchased.

28. Plaintiff's claims fail in whole or in part because the applicable warranty expired.

29. Plaintiff's claims fail in whole or in part because of Plaintiff's misuse and/or non-compliance with the conditions of warranty.

30. Plaintiff's claims fail in whole or in part because one or more product defects resulted from an action or event following delivery of the products.

31. Plaintiff cannot recover for damages caused by its own conduct.

32. Plaintiff failed to mitigate its damages.

33. Plaintiff cannot recover consequential damages.

34. Plaintiff failed to provide sufficient notice of defects and/or to meet other conditions precedent to the application of any warranty.

35. Plaintiff's claims fail as a result of Plaintiff's breach of contract.

36. BTC Power's performance pursuant to the alleged warranties or performance under the April 29, 2019 Conditions, Agreements and/or other contracts is excused by force majeure.

37. Plaintiff's claims are barred in whole or in part by any of the following disclaimers or acts:

- a. vandalism;
- b. any alternation or modification of the products in any way not approved in writing by BTC Power;
- c. misapplication or misuse of the products by Plaintiff or users of the products;
- d. installation or relocation of the products unless performed by an authorized BTC Power distributor or by an authorized installer or service provider;
- e. improper site preparation or maintenance;
- f. damage as a result of accidents, extreme power surge, or extreme electromagnetic field; and/or
- g. use of the product with software, interfacing, parts or supplies not supplied by BTC Power.

38. Any warranty claimed by Plaintiff is limited by the express language of the warranty;

39. BTC Power's performance was rendered impossible, excused, and/or delayed as a result of parts and/or product shortages due to circumstances beyond BTC Power's control.

40. BTC Power has the right of set off-against any damages claimed by Plaintiff. Plaintiff, however, is not entitled to deduct or set-off any amounts due and owing by Plaintiff to BTC Power.

41. BTC Power is entitled to recover its attorney's fees and costs against Plaintiff.

WHEREFORE, BTC Power prays that the Court deny the claims set forth in Plaintiff's Petition and award BTC Power its costs and attorney fees and all other relief to which it is entitled.

Respectfully submitted,

/s/ Kayci B. Hughes

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**ATTORNEYS FOR DEFENDANT,  
BROADBAND TELCOM POWER, INC.**

**CERTIFICATE OF SERVICE**

I certify that on January 12, 2022, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system and to the following attorneys of record:

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/s/ Kayci B. Hughes  
Kayci Bair Hughes